

**BIGFORK LAND USE ADVISORY COMMITTEE**  
**Approved Minutes, as Amended, Thursday December 1, 2022**  
**4:00 PM Bethany Lutheran Church – Downstairs Meeting Room**

Chairwoman Susan Johnson called the meeting to order at 4:01 p.m.

**Present:** Committee member attendees: Richard Michaud, Jerry Sorensen, Shelley Gonzales, Chany Ockert, Susan Johnson and Angela DeFries; absent was Lou McGuire; Public: two members; Flathead Planning and Zoning: Zachary Moon.

The agenda was approved (m/s, Ockert/DeFries), vote unanimous.

Minutes of the October 27, 2022, meeting were approved (m/s, Sorensen/Ockert), vote unanimous.

**Administrator's Report and Announcements:**

Sign-in sheet passed around. Approved minutes and documents are posted on the County website: [flathead.mt.gov](http://flathead.mt.gov) Click on Department List, Planning and Zoning, Meetings and Board Information, Bigfork Land Use Advisory Committee.

Gonzales presented the status of most recent applications:  
FZV 22-09 Guenzler was approved by the Board of Adjustment.  
FZC 22-19 Sullivan was approved by the Planning Board.  
FPP 22-27 Knoll was approved by the Planning Board.

Election filing dates will be posted to the county website soon. Two seats will be open for election and the member-at-large and recording secretary positions will be open for appointment.

**Public Comment:**

Paul Mutascio-P.O. Box 1930 Bigfork: The Commissioner's Office posted a notice for a public hearing on the Abandonment of Public Roadway #520, a portion of Electric Avenue in Bigfork (see attached document). The public hearing is on December 13, 2022, at 10:30 a.m. in the Commissioner's Chambers, 800 South Main Street, Kalispell. Mutascio stated that this is public property being converted into private property use eliminating 10 public parking places and making it more difficult for delivery trucks to make deliveries to the businesses on Electric Avenue. He stated that as this action is a land use decision, and it should have come before BLUAC to allow for public input.

Andrea Pickens-She spoke about the Montana Housing Task Force and how they are making recommendations to the legislature for the next session. Task Force meetings are not conveniently held for public input. High density housing results in increased crime and public-school degradation. She is afraid for public safety on the streets and quality of life. Concerned about the regulations being proposed in the upcoming legislative session. Affordable housing is being used by people who limit their work hours to qualify for subsidized housing. She referred to the DEQ website ([deq.mt.gov/about/housing-task-force](http://deq.mt.gov/about/housing-task-force)) for information on the bills being submitted to the legislature. Local control is being eliminated to streamline the process in favor of developers, not Montanans.

**Application:**

**FZV-22-10** A request from James & Dianne Brown for a variance to Section 3.16.040(3)(A) of the Flathead County Zoning Regulations (FCZR), to the setbacks for a principal structure. The property is zoned *RC-1 (Residential Cluster)* and is located at 156 Bjork Drive, Bigfork, MT within the Bigfork Zoning District. The property can legally be described as Lot 131 of Eagle Bend No. 12 in Section 26, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana

**Staff Report:**

Zachery Moon presented the staff report. There have been no public comment on the notices.

Q. Johnson: When the applicants do not attend the meeting it makes it difficult for us to ask questions. Is the house about 3,000 square feet? A. Moon: 3,408 square feet which includes the livable space, garage, and rear deck.

Q. Ockert: Is that the footprint of the house? A. Moon: It appears to be a single-story residence.

Q. Johnson: Did the applicant go back to the architect so see if a design could fit within the setback requirement. A. Moon: They submitted the application without discussing anything with us. There is some buildable area in the side setback of the property.

Q. Sorensen: We looked at a similar request by the adjacent neighbor, could you remind me how that was resolved? A. Moon: The request was approved for a variance of 2 feet into the front setback for the garage that was already built.

Q. Gonzales: Does the lot extend into the road right-of-way, or does it abut to the road? I am asking to determine how far the home will encroach toward or into the road with a 5-foot variance. A. Moon: Property is on the edge of the right-of-way.

Q. Ockert: Have you had any conversations with the applicants? A. Moon: I have only had contact with the architect.

Q. DeFries: Did you have a conversation with the architect regarding setbacks before the plans were drawn? A. Moon: No.

Q. Ockert: Was there any conversation regarding covenants, or is this just the size home they want to build? A. Moon: We do not address covenants with the applicant.

Q. Michaud: Does the drawing by the architect show the deck on the home and does the deck meet the setback requirement? A. Moon: Yes.

Q. Gonzales: Do you know if the architect consulted with the Eagle Bend HOA? I am asking because in a similar situation the Eagle Bend HOA told the property owner it was ok to build in the setback and I am assuming the application was approved based on the HOA's involvement. Moon: I am not aware.

Q. Michaud: If the deck was 3 feet shorter, then the house would comply with the setback? A. Moon: Yes, the deck would need to be reduced to offset the front setback requirement.

Q. Michaud: There are six HOAs in Eagle Bend and they all want different things. A. Moon: We do not keep track of covenants, CCRs, and HOAs.

**Applicant Report:**

None, the applicant did not attend the meeting.

Johnson stated that it is important for the applicant to attend the meeting as we have questions and I guess they think as an advisory committee, they need to only attend the meeting where there is a final decision.

**Public Agency Comments:**

None

**Public Comments:**

None

**Staff Reply:**

I did not meet with the applicant, only met with the architect.

**Applicant Reply:**

None

**Committee Discussion:**

Sorensen agreed with Johnson that without the applicant here to rebut, there is no reason not to support the staff report. The staff report is well done and there is no obvious hardship and there are alternatives in the design. Without hearing from the applicant or architect to rebut, I do not know what else we can do. Eagle Bend

has numerous lots that are unbuildable and for us to give consideration, the applicants need to be here to answer our questions. DeFries stated she drove by the applicant site and there are a variety of home sizes/standards in the area. Knowing the setbacks, it seems the architect could have designed a slightly smaller home that fits into the neighborhood and meets setbacks.

### **Findings of Fact:**

Sorensen moved to adopt the Findings of Facts, DeFries seconded the motion. Motion was approved unanimously.

### **Committee Discussion and Vote:**

Gonzales stated that there is no hardship to support the request. Ockert stated that there are reasonable alternatives, the topography was known prior to the purchase, and there are houses on Bjork that have smaller footprints. Johnson moved to forward to the Board of Adjustment a recommendation to deny FZV 22-10. Motion was seconded by DeFries, motion passed unanimously. The Board of Adjustment will consider the application on Tuesday, December 6, 2022, at 6 p.m. in the second-floor conference room of the South Campus Building located at 40 11<sup>th</sup> Street West, Kalispell.

### **Old Business:**

The committee discussed the proposed changes to the BLUAC By-Laws. One new addition was made to limit public comments to 5 minutes, unless otherwise recognized by the BLUAC chairperson. Sorensen asked to amend #4 under Duties to include “update and offer amendment to” the Bigfork Neighborhood Plan. Johnson stated that she had discussed our By-Laws with the county attorney, specifically the Statement of Purpose, to clarify the committee’s community activities as it relates to the community’s efforts regarding growth and development. The county attorney will review the document and reply to BLUAC. Sorensen stated that it is our duty to uphold the Neighborhood Plan as it is the most important thing we do. DeFries stated that we need to be able to bring in the Road Department or the Bigfork Chamber to discuss important issues. Michaud stated that BLUAC is supposed to be representing the community and I do not think BLUAC should be told that we cannot do that. Ockert stated that we must make sure that we offer this opportunity to everyone and comply with all open meeting laws. Sorensen stated that we should be able to participate in preplanning meetings with the community that is very controlled.

There was a general discussion by staff regarding lawsuits by developers against government agencies, public notices, and the difficulties with compliance. De Fries asked staff if they have had experience with other LUACs trying to be more

proactive in their communities. Moon replied it is a challenge as the communities want involvement, but there are constraints that limit involvement.

Michaud stated that P&Z should have explained why we could not meet with a developer at a BLUAC meeting.

Moon stated that BLUAC, West Valley LUAC, and Mid-Canyon LUAC are the most active groups.

Johnson will submit By-Law changes to P&Z for review and further submission to the county attorney for review with final approval by the county commissioners.

Ockert moved to approve the changes to the By-Laws as submitted by Johnson and added by Sorensen to be forwarded for approval. DeFries seconded. Motion passed unanimously.

### **New Business:**

Planning and Zoning published a Board and Information booklet regarding Robert's Rules of Order and meeting guidelines. Some of the committee members did not receive the publication. Gonzales stated that the Appendix A to the By-Laws states the meeting guidelines to process applications from Planning and Zoning.

De Fries will contact Planning and Zoning to have the booklet emailed to all BLUAC members.

### **Adjourn:**

Ockert moved to adjourn, Johnson seconded. Motion passed unanimously at 5:26 p.m.

Respectfully submitted by:

Shelley Gonzales, member and acting recording secretary